THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.6796 OF 2005

DATED: 28-08-2007

BETWEEN

M/s. Krishna 70mm Cinema Theatre,
Rep. by its Managing Partner,
J. Satyanarayana, Miyapur,
Ranga Reddy District and another.

...PETITIONERS

AND

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Home Department, Secretariat,
Hyderabad and others.

...RESPONDENTS

ORDER:

Petitioners – cinema theatres, seek a Writ of Mandamus to declare the impugned notice dated 22.03.2005 issued by the Commissioner, Serilingampally Municipality – third respondent as illegal, void and against the provisions of the Andhra Pradesh Cinemas (Regulation) Act, 1955 (for short 'the Act').

2. The Commissioner, Serilingampally issued the impugned notice dated 22.03.2005 stating that the Serilingampally Municipality issued No objection certificate for construction of permanent theatres but not accorded permission for construction of permanent cinema building as required under Sections 209, 210, 211 and 216 of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Municipalities Act') duly collecting betterment charges, building permission scrutiny fee and security fee, therefore, the petitioners

were directed to stop the construction of the cinema theatres and obtain technical approval for construction of the cinema theatres from HUDA under Section 13 and 14 of the Andhra Pradesh Urban Area (Development) Act, 1975 duly getting the same released from the Commissioner, Serilingampally Municipality after paying the required charges. It is further stated that if the petitioners fail to comply with the aforesaid orders the unauthorized construction of the permanent theatres made by the petitioners will be removed as per the provisions of Section 228(1) and (2) of the Municipalities Act read with relevant Sections of the Andhra Pradesh Urban Area (Development) Act, 1975 at the cost of the petitioners.

3. This Court while admitting the writ petition on 01.04.2005 suspended the impugned notice.

4. It is the case of the petitioners that the theaters are represented by its Managing Partners namely J. Satynarayana and J. Ramulu respectively and that the latter is the father of the former and they are the owners of the plot Nos.1, 2 and 3 of Sy.No.71 of Miyapur Village, Serilingampally Mandal, Ranga Reddy District. They further submit that they have made an application to the Joint Collector and Licensing Authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955 (for short 'the Act') for grant of NOC and the consequential construction permission for construction of permanent theatres in 2001. The second respondent after calling for the remarks of all the concerned authorities and after receiving the recommendations of the concerned authorities including the third respondent, who by proceedings dated 24.11.2001 stated that it has no objection for construction of the theatres; initially refused to issue no objection certificate under Rule 8-B of the Andhra Pradesh Cinemas (Regulation) Rules, 1970 (for short 'the Rules') vide letter dated 06.07.2002 against which the petitioners filed statutory appeal under Section 7 of the Act before the first respondent. The appellate authority/Government of AP allowed the appeal by issuing orders in G.O.Rt.No.1251 Home (General-A)

Department dated 21.10.2002, after calling for the remarks, reports and on a perusal of the records granted no objection certificate for construction of permanent cinema theatres in exercise of powers conferred under Section 12 of the Act and the Rules made thereunder subject to the conditions laid down in Clause 1(2)(3) of Appendix – I of the Rules and also as per Section 6 of the Act.

The District Collector was directed to grant permission to the petitioners – theatres as per the Act and the Rules. Accordingly, the second respondent/licensing authority accorded permission vide proceedings No.C2/5266/2002 dated 03.02.2003 and proceedings No.C2/5267/2002 dated 06.02.2003 subject to fulfillment of 36 conditions.

5. It is further stated that the plans were also approved duly signed by the second respondent and according to the said permission only the theatres have been constructed without deviating in any manner with reference to the conditions imposed therein. It is stated that the construction permission was granted by the second respondent in exercise of powers vested in him under Section 6 of the Act and as per Section 6 of the Act the second respondent is empowered to grant permission for construction of the cinema theatres notwithstanding the provisions contained in the AP Municipal Corporations Act, AP Municipalities Act, AP Andhra Area Town Planning Act, Gram Panchayat Act etc. It is stated that once the competent authority has granted permission for construction of permanent theatres, the third respondent has no power or authority to direct the petitioners requiring them to obtain building permission for the construction of cinema theatres once again under the provisions of the Municipalities Act or to stop the construction or to demand to pay the betterment charges or building permission scrutiny fee. Therefore, the impugned notice issued by the third respondent is illegal and arbitrary.

6. The third respondent filed counter stating that he issued the no objection certificate on 24.11.2001 for construction of the cinema theatres in

the above premises but the said issuance of NOCs does not amount to grant of permission for construction of cinema theatres as required under Section 209, 210, 211 and 216 of the Municipalities Act, therefore, the petitioners are required to obtain permission from the Municipality. It is stated that the petitioners have to submit building plan to the third respondent for approval and the permission granted by the second respondent does not contain building plan.

The impugned notice cannot be questioned and, in fact, the owners of the Sai Ranga Theatre situated at Miyapur paid necessary charges of Rs.75,830/- towards building permission security fee, Rs.1,33,335/- towards betterment charges and Rs.60,000/- towards security deposit and the building plan of the said theatre was approved by the third respondent for construction of the theatre, therefore, it cannot be said that there is no legal requirement to pay the betterment and other charges and that the petitioner also requires to take permission from the municipality.

7. The first respondent filed a counter similar to that of the third respondent stating that against the rejection order of the Joint Collector/Licensing Authority vide memo dated 16.07.2002, petitioners filed an appeal before the Government and the Government passed orders in G.O.Rt.No.1251 dated 21.10.2002 with a direction to grant construction permission to the petitioners – theatres under the Act and the Rules. Pursuant to the orders of the Government the District Collector (the then Licensing Authority) directed the petitioners to submit the documents along with structural, electrical diagrams and required challan for Rs.200/- and after receiving the required documents the matters has been referred to the Inspecting Officers i.e. 1) The Revenue Divisional Officer, Chevella Division; 2) The Executive Engineer (R&)B) Roads Division 3) The Deputy Electrical Inspector, Ranga Reddy (East) Sub-Division and 4) The District Medical & Health Officer, Ranga Reddy for enquiry under Rule 9-B of the Rules and to submit their reports duly attesting the sketches.

The Inspecting Officers recommended for grant of NOC and accordingly the licensing authority permitted the petitioners to construct the aforesaid two permanent theatres subject to fulfillment of 36 conditions vide proceedings dated 06.02.2003 and 03.02.2003 respectively.

8. The first respondent - the Principal Secretary to Government, Home Department did not indicate the stand as to whether the provisions of the Municipalities Act do apply or not for according permission for construction of the permanent cinema theatres by the licensing authority under Section 6 of the Act but vaguely stated that the contention of the petitioners that the Municipalities Act do not apply as per Section 6 of the Act is unsustainable, as they have misinterpreted the meaning of Section 6 of the Act. The petitioners have to obtain permission from the Municipality for making construction of the cinema theatres in the above premises but the petitioners have failed to do so. It is further stated that the Inspecting Officers did not point out anything with regard to the submergence of the land in Patel Cherurvu except the Vice-Chairman, HUDA and the Government vide aforesaid G.O. directed the second respondent to grant permission subject to various conditions laid down in the Appendix – I and the Rules and also as per Section 6 of the Act.

It is stated that after getting NOC from the second respondent the petitioners have to get the plans approved from the concerned municipality by paying betterment and other charges and also obtain written permission as required under Sections 209, 210, 211 and 216 of the Municipalities Act for the construction of permanent building but the petitioners did not obtain any such permission for construction of the permission cinema theatres. Therefore, the notice issued by the third respondent dated 22.03.2002 is legal and valid.

It is stated that W.P.No.15152 of 2006 filed by Kasi Reddy Bhaskar Reddy to declare the action of the petitioners in encroaching the Government land, water tanks and ponds; to cancel the orders passed by the Government in G.O.Rt.No.1251 dated 21.10.2002 granting NOC in favour of

the petitioners for construction and to remove illegal encroachments in the full tank level area of Miyapur and to take action against the concerned officers, who have given NOC, was dismissed stating that the petitioner approached the Court at a stage where the construction of the theatres was already completed and the licensing authority also reported that the construction was already completed, therefore, the further progress is dropped in the writ petition for the reasons that NOC was granted by the concerned authorities and the theatres were completed with huge costs by availing loan from the Andhra Pradesh State Financial Corporation and the petitioner have undertaken to construct the compound wall around the theatres for the safety of the public.

9. The first respondent was required to file a counter by taking a stand as to whether the provisions of the Municipalities Act relating to the construction of building apply to the construction of cinema theatres or not in view of Section 6 of the Act and the Rules made thereunder; but the first respondent without denying the averments or taking a definite stand vaguely stated that the petitioners do require to obtain permission under the provisions of the Municipalities Act for construction of cinema theatres. Therefore, the question that arises for consideration as to whether the notice issued by the third respondent requiring the petitioners to obtain permission duly paying betterment charges and building permission scrutiny fee under the provisions of the Municipalities Act and directing them to stop construction of cinema theatre buildings, failing which the construction will be removed, is legal and valid.

10. Under Section 209 of the Municipalities Act if any person intends to construct a building he shall send an application to the Commissioner in writing for permission and unless the permission is granted, no construction shall be made. Under Section 212 of the Municipalities Act the Commissioner, within 60 days of the receipt of the application, shall pass appropriate order either granting or refusing for approval of the site for grant

of permission to construct the building. Therefore, the question that arises for consideration as to whether the relevant sections applicable for construction of the building under the Municipalities Act are applicable for construction of cinema theatres.

11. At that relevant time the District Collector and presently the Joint Collector is the licensing authority for the cinematograph exhibitions. The second respondent is the licensing authority under Section 4 of the Act; Section 5 deals with the restriction of powers of the licensing authority under which the licensing authority shall not grant licence under the Act unless he satisfies that the Rules made under the Act are substantially complied with and adequate precautions have been taken in the place, in respect of which the licence is to be given, to provide for the safety of the persons attending the exhibitions therein and subject to certain provisions and to the control of the Government, the licensing authority is entitled to grant licence, to such persons, if he thinks fit, and on such terms and conditions and subject to such restrictions as it may determine.

12. It is the version of the petitioners that as per Section 6 of the Act relating to the construction of cinema theatres for the cinematograph exhibitions, the provisions of the Municipalities Act, Municipal Corporations Act, Gram Panchayat Act etc. do not apply but as per the version of the respondents the petitioners misinterpreted Section 6 of the Act though they require permission under the Municipalities Act for construction of cinema theatres. Section 6 of the Act is extracted as under:

> "**6. Special provisions for building constructed or reconstructed solely for cinematograph exhibitions:-**
> (1) Nothing contained in the Hyderabad Municipal Corporations Act, 1955 (Act II of 1955), or in the Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1888 (Act II of 1888) or in the Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 (Act V of 1920) now **A.P. Municipalities Act, 1965 (6 of 1965)** or in the Andhra Pradesh (Andhra Area) Town Planning Act, 1920 (Act Vii of 1920), or in the Andhra Pradesh (Andhra Area) District Board Act, 1920 (Act XIV of 1920 or in the Andhra Pradesh (Andhra Area) Village Panchayats Act, 1950 (Act X

of 1950) now **A.P. Panchayat Raj Act, 1994 (13 of 1994)** in regard to -

(a) the grant of permission for the construction or reconstruction of a building, or

(b) the grant of licence for the use of any place or building for any purpose for which such licence is required under those Act, or

(c) the grant of permission to install any machinery in any place or building,

shall apply to the construction or reconstruction of, or the use of, or the installation of any machinery in any place or building to be used exclusively for the holding of cinematograph exhibitions; and in every such case, an application for licence or permission referred to in any of the Clauses (a) to (c) above shall be made to the licensing authority under this Act, in accordance with the rules made in this behalf under this Act.

(2) Subject to the control of Government and to any rules made in this behalf, the licensing authority, after making such inquiry as it deems fit and consulting the Chief Executive Officer (by whatever designation he may be known) of the local authority concerned, for reasons to be recorded either grant or refuse to grant the licence or permission applied for."

13. Perusal of Section 6 of the Act goes to show that nothing contained in the Municipalities Act in regard to the grant of permission for construction of building for cinematograph exhibitions or for grant of licence for use of any place or building for any purpose for which such licence is required under the Act or the grant of permission to install any machinery in place or building, shall apply to the construction of the building to be used exclusively for the holding of cinematograph exhibitions. Therefore, Section 6 of the Act clearly indicates that the provisions of the Municipalities Act shall not apply to the construction of cinema theatres, which are to be used exclusively for cinematograph exhibitions. When the provisions of the Municipalities Act do not apply for grant of permission for construction of cinema building for holding cinematograph exhibitions the question of applying for permission for construction of cinema theatres before the third respondent does not arise. Nothing is provided under the Municipalities Act or the Rules made thereunder about the specifications as to how the cinema theatre has to be constructed, therefore, Section 6 of the Act is a special provision conferring

power on the licensing authority for grant of permission for construction of cinema theatre.

14. Rule 6 of the Rules deals with the requirement for the cinema buildings. Rule 7 of the Rules deals with the number of cinema buildings to be allowed to function in any place on the basis of the population in such place and the distance between one permanent theatre and another permanent theatre etc. Chapter-II of the Rules deals with the permission for construction of cinema building and installation of machinery. Under Rule 8-A any person intending to construct a cinema building has to make an application for issuance of NOC. Rule 8-B deals with grant of NOC. After obtaining NOC, under Rule 9-A an application, for grant of permission to construct cinema building, has to be filed within six months. Under Rule 9-B on receipt of the application, if the licensing authority is satisfied that the other requirements of the rules are fulfilled, the licensing authority is entitled either to grant or refuse permission for construction of the cinema building. Thus, I am of the opinion that under Chapter-II the Rules from Rule 8-A to 9-B exhaustively deals with the manner and method of applying and granting permission for the construction of cinema building. Rule 16 of the Rules deals with the fee payable for inspections, certificates, licenses etc. In the instant case though the application of the petitioners for grant of NOC for construction of cinema building was initially rejected by the licensing authority, on an appeal filed against the said order, the Government keeping in view the Act and the Rules made thereunder and after examining the entire records, recommendations, reports etc. directed the District Collector to grant permission for construction of the aforesaid theatres under the Act and Rules made thereunder. Pursuant to the orders of the Government dated 21.10.2002 the petitioners submitted structural and electrical diagrams in accordance with the rules along with requisite challan of Rs.200/- and also by paying challan of Rs.3,000/- towards processing fee towards the approval of the plans and designs by the concerned authorities. After receipt of the

said building plans, structural and electrical diagrams, the licensing authority referred the matter to the Inspecting Officers, who submitted their reports under Rule 9-B of the Rules recommending for grant of permission for construction of cinema theatre buildings. After being satisfied with the fulfillment of all the requirements the licensing authority granted permission in favour of the petitioners for construction of permanent cinema theatres subject to 36 conditions.

15. It is not the case of the respondents also that the petitioners have deviated from any of the specifications or conditions.
The licensing authority also duly approved the building plans and electrical diagrams. Therefore, I am of the opinion that Section 6 of the Act and Chapter II of the Rules exhaustively deal with the construction of permanent cinema theatres and Section 6 of the Act and the Rules alone apply for the construction of the cinema theatres and the third respondent under the Municipalities Act have no power or authority either to process or give any sanction for permission for construction of the building for exhibition of films. Therefore, it cannot be said that the permanent cinema theaters constructed by the petitioner are unauthorized or contrary to the provisions of the Municipalities Act, as a building is different from a building exclusively constructed for exhibition of films. The power has been conferred on the licensing authority alone by virtue of Section 6 of the Act to grant permission for construction of cinema building subject to fulfillment of various conditions and on the recommendations of all the concerned authorities. Therefore, there is no requirement again for the petitioners to get permission from the third respondent under the Municipalities Act for construction of cinema theatres. Therefore, the third respondent has no power or authority either to insist upon the petitioners to obtain permission for construction of cinema theaters or to stop the construction or demolish the theatres already constructed.

Accordingly, the impugned notice is set aside and the writ petition is

allowed. There shall be no order as to costs.

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V. ESWARAIAH, J

August 28, 2007
DSK